

2009 HOUSE JUDICIARY

HB 1291

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1291

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/19/09

Recorder Job Number: 7202

Committee Clerk Signature 

Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1291.

**Rep. Lois Delmore:** Sponsor (attachment of Cindy Bischof Act).

**Chairman DeKrey:** Can you explain the fiscal note.

**Rep. Delmore:** There isn't anything there.

**Rep. Koppelman:** What is the intent of the bill, it appears that current law allows electronic monitoring, the language appears to be permissive, but not mandatory. What is this going to do.

**Rep. Delmore:** If there is a need for monitoring, there's been an assessment done, it is not done in every case. When the victim is clearly at risk, protection orders have been violated, then they can be monitored and offenders can be tracked.

**Rep. Koppelman:** Is there something in law now that prohibits that, or is this just a stronger version of what is in law.

**Rep. Delmore:** To my knowledge, no it does not, but it doesn't allow for it either. That's why I put in the bill.

**Rep. Klemin:** On page 2, line 6 of the bill, it refers to electronic home detention or global positioning system monitoring. All of your testimony is directed toward the latter part of this

GPS monitoring. Is it the intention that we could confine people to their homes if there is a domestic violence protection order.

**Rep. Delmore:** I guess that really wasn't the intent. That's what LC put into the bill.

**Rep. Klemin:** The home detention is defined on page 1, to keep someone confined to their home, instead of putting them in jail. I'm wondering if someone hasn't been convicted of anything or even charged with anything, other than the protection order issued, I'm wondering if you can legally put them in jail at their own house.

**Rep. Delmore:** It is my understanding that if those protection orders are violated, you go to court, and you can go to jail. So I would assume that this would allow the judge to confine them to their home, instead of going to jail. It will give them more options.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1291. Testimony in opposition. Testimony neutral.

**Janelle Moos, Executive Director, ND Council on Abused Women's Services:** Neutral (attachment).

**Rep. Delmore:** Do you not think there are instances where protection orders are clearly being violated and we're putting women or men at risk.

**Janelle Moos:** Absolutely. I completely agree with you. The only thing that we have a concern with this is essentially that law enforcement officers need more training. When someone violates a protection order they are subject to incarceration as well.

**Rep. Koppelman:** It seems that there isn't any change from current law. The current statute already says that you can use this. You mention the point that it talks about assessment, but nothing is mandatory. Nothing indicates that law enforcement must develop some system or program. It simply says that if they assess that there is an issue, then they can pursue this. I don't see anything about this on the fiscal note.

**Janelle Moos:** We've heard that a lot of our probation officers are seeing an increase in the use of the monitoring. Each law enforcement department varies in their policies. There are tools that we have available. There is more training that we can do in coordination with them.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1291

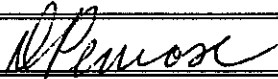
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/20/09

Recorder Job Number: 7329

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will hear from DOCR.

**Charles Placek, Dep. Director of Administrative Services, Adult Services Division,**

**Department of Corrections:** (attachment) We were asked yesterday to clarify the fiscal note that was prepared on HB 1291. DOCR feels the fiscal note is inaccurate. I would refer you to section 2B of the fiscal note that was prepared. We feel that is inaccurate. Specifically, it reads in the second sentence, "the electronic monitoring program would be operated and paid for by the DOCR or other correctional facility. We feel that is inaccurate.

**Rep. Koppelman:** That's not part of the bill, that's part of the fiscal note, correct.

**Charles Placek:** That's correct.

**Chairman DeKrey:** Thank you.

**Rep. Griffin:** The amendment is 90627.0101 (explained the amendment). I move the amendment.

**Rep. Delmore:** Second.

**Chairman DeKrey:** Any further discussion.

**Rep. Koppelman:** So your amendment would move it from a civil proceeding strictly to a criminal proceeding.

**Rep. Griffin:** You have to be charged with a crime first. The court would make it part of your condition of release.

**Rep. Koppelman:** So the effect of that is that it will apply to people who are charged with a crime, not people who may have a protection order against them who might be subject to a civil action.

**Rep. Griffin:** Yes.

**Chairman DeKrey:** Further discussion, we will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

**Rep. Dahl:** I move a Do Pass as amended.

**Rep. Wolf:** Second.

**13 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Wolf**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/23/2009

Amendment to: HB 1291

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                | 2007-2009 Biennium |             | 2009-2011 Biennium |             | 2011-2013 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       |                    |             |                    |             |                    |             |
| Expenditures   |                    |             |                    |             |                    |             |
| Appropriations |                    |             |                    |             |                    |             |

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would allow for an individual who is charged with or arrested for a crime involving domestic violence to be placed under an electronic home detention or global positioning system monitoring program as a condition for release from custody.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The electronic home detention or global positioning system monitoring program would most likely be operated and paid for by local law enforcement or a correctional facility. The fiscal impact of such a program can not be determined by the Court. There is no fiscal impact to the court system.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

There is no fiscal impact to the court system.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

|                      |          |                       |               |
|----------------------|----------|-----------------------|---------------|
| <b>Name:</b>         | Don Wolf | <b>Agency:</b>        | Supreme Court |
| <b>Phone Number:</b> | 328-3509 | <b>Date Prepared:</b> | 01/26/2009    |

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/13/2009

Bill/Resolution No.: HB 1291

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

|                | 2007-2009 Biennium |             | 2009-2011 Biennium |             | 2011-2013 Biennium |             |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
|                | General Fund       | Other Funds | General Fund       | Other Funds | General Fund       | Other Funds |
| Revenues       |                    |             |                    |             |                    |             |
| Expenditures   |                    |             |                    |             |                    |             |
| Appropriations |                    |             |                    |             |                    |             |

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| 2007-2009 Biennium |        |                  | 2009-2011 Biennium |        |                  | 2011-2013 Biennium |        |                  |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties           | Cities | School Districts | Counties           | Cities | School Districts | Counties           | Cities | School Districts |
|                    |        |                  |                    |        |                  |                    |        |                  |

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would allow for an individual who is subject to a domestic violence protection order to be placed in an electronic monitoring program.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

An individual who is subject to a domestic violence protection order and who has been assessed by law enforcement as a domestic violence offender who is at high risk to re-assault the victim may be subjected by the court to electronic monitoring. The electronic monitoring program would be operated and paid for by the Department of Corrections and Rehabilitation or other correctional facility. The fiscal impact of such a program can not be determined by the Court.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

There may be a fiscal impact to the Department of Corrections and Rehabilitation or other correctional facilities. There is no fiscal impact to the court system.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

|                      |          |                       |               |
|----------------------|----------|-----------------------|---------------|
| <b>Name:</b>         | Don Wolf | <b>Agency:</b>        | Supreme Court |
| <b>Phone Number:</b> | 328-3509 | <b>Date Prepared:</b> | 01/14/2009    |



VR  
1/21/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1291

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the use of electronic monitoring as a condition of release for certain individuals.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

**Release conditions.** If an individual charged with or arrested for a crime involving domestic violence, including a violation of a domestic violence protection order under section 14-07.1-03 or an order prohibiting contact under section 14-07.1-13, is released from custody, a district or municipal court may require that electronic home detention or global positioning system monitoring be used for the individual as a condition of release."

Renumber accordingly

Date: 1/20/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1291

**HOUSE JUDICIARY COMMITTEE**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Dahl Seconded By Rep. Waef

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------|-----|----|-----------------|-----|----|
| Ch. DeKrey      | ✓   |    | Rep. Delmore    | ✓   |    |
| Rep. Klemin     | ✓   |    | Rep. Griffin    | ✓   |    |
| Rep. Boehning   | ✓   |    | Rep. Vig        | ✓   |    |
| Rep. Dahl       | ✓   |    | Rep. Wolf       | ✓   |    |
| Rep. Hatlestad  | ✓   |    | Rep. Zaiser     | ✓   |    |
| Rep. Kingsbury  | ✓   |    |                 |     |    |
| Rep. Koppelman  | ✓   |    |                 |     |    |
| Rep. Kretschmar | ✓   |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |
|                 |     |    |                 |     |    |

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Waef

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1291: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1291 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-07.1 of the North Dakota Century Code, relating to the use of electronic monitoring as a condition of release for certain individuals.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 14-07.1 of the North Dakota Century Code is created and enacted as follows:

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Renumber accordingly

2009 SENATE JUDICIARY

HB 1291

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1291

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10047

Committee Clerk Signature



Minutes:

**Senator Nething** opens the hearing on HB 1291, relating to the use of electronic monitoring as a condition of release for certain individuals.

**Representative Lois Delmore**, introduces the bill (see attached testimony #1).

**Senator Olafson** is there a central place in North Dakota that monitors the devices?

**Representative Delmore** I am not familiar with exactly how they set up the GPS monitoring. I know we use it for sex offenders and it is available.

**Senator Fiebiger** Do you have any idea of how often this may be used and what the cost maybe to implement it?

**Representative Delmore** I don't know that there is a cost to it. Originally this bill also provided for an assessment so there was a fiscal note, because of the cost of training and etc. the house decided we would try the monitoring allowing our judges along with law enforcement when it would be a good remedy to use.

**Senator Schneider** Is there any way to make the position of the offender known to the victim through GPS?

**Representative Delmore** I am not real familiar with how they work since they are relatively new in this state. I would see it being used in protection order violation and maybe the judge

does not feel that there is not enough evidence to put somebody in jail so they want to monitor them and make sure someone's safety is taken care of.

**Janelle Moos**, North Dakota Council on Abused Women's Services, spoke in favor of the bill (see attached testimony #2).

**Senator Lyson** I agree that this is another that could be used, but do you really think it can be used in the rural areas of North Dakota where the nearest law enforcement officers is 18 miles away?

**Janelle Moos** I agree with your comments and in rural areas the nearest officer is probably miles away. I don't know if it will be able to work, I am not an expert on it.

**Senator Lyson** Did you check with other states are using a system like this in rural areas?

**Janelle Moos** The other states who are using this are largest states and they have not talked about the rural versus urban design.

**Senator Schneider** Do you know if we use active or passive GPS in North Dakota?

**Janelle Moos** I am not sure. The handout I gave you was put together by the Safety Net Team, where they look at all the pieces of technology that could impact the research.

**Senator Olafson** I have some concerns that this would only work if it is monitored 24-7-365, do you know if we have a facility in North Dakota that is monitoring like that?

**Janelle Moos** it is going to be different based on each jurisdiction. It might be different in rural areas versus urban areas. I think it is a great additional tool as long as it is part of comprehensive response to domestic violence offenders.

**Senator Nelson** I think the key word is "may". It doesn't say you have to do it, but it is an additional tool that we can use.

**Janelle Moos** If there are larger communities that have the capacity and have the ability to do this, we might find ways to branch it out to more rural communities.

**Senator Nething** closed the hearing on HB 1291.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1291

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10051

Committee Clerk Signature



Minutes:

**Senator Nething** opens the discussion on HB 1291, relating to the use of electronic monitoring as a condition of release for certain individuals.

**Senator Nething** I don't see this as wide spread use. A lot of times when you pass a bill you can have a deterrent effect by having the law in the books. Sometimes when people get int hat mind set they don't care what the law says. Never the less I think some good will come from this bill.

**Senator Lyson** I don't think we will see this used very often. It will be used with the people they really know could hurt somebody and I think it is a good bill for that reason. I move a Do Pass on HB 1291.

**Senator Nelson** seconds the motion.

The bill received a Do Pass on a vote of 6 to 0.





**REPORT OF STANDING COMMITTEE (410)**  
March 3, 2009 12:53 p.m.

**Module No: SR-38-3913**  
**Carrier: Schnelder**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1291, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1291 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1291

**House Judiciary Committee  
Duane DeKrey, Chairman  
January 20<sup>th</sup>, 2009**

**Charles R. Placek,  
Deputy Director of Administrative Services  
Adult Services Division  
Department of Corrections  
Presenting Testimony Re: HB 1291 – Fiscal Note**

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1. The DOCR feels the Fiscal Note for HB 1291 is inaccurate.
  - a. HB 1291 allows the courts to select individuals with a domestic violence protection order to be placed on electronic monitoring.
  - b. HB 1291 does not set forth procedures how the monitoring should take place or whom should be responsible to monitor the individual.
2. The DOCR is of the opinion that the vast majority of the individuals that the court selects to be placed on electronic monitoring are not under the DOCR jurisdiction.
3. Traditional enforcement of Domestic Violence orders is done by local law enforcement. The bill also states that law enforcement will assess the individual and determine who is at high risk to reassault the victim.
4. The DOCR feels strongly that it is not the agency that should be charged with the implementation of this domestic violence protection order electronic monitoring program. As stated above, the vast majority of the individuals selected by the court may not be under the DOCR's jurisdiction.
5. If the bill is amended and places implementation of this new program under the DOCR, we will ask that an amended Fiscal Note be prepared.

## The Cindy Bischof Act: Changing the Paradigm on Domestic Violence

### Introduction

Approximately three women a day are killed in the US by their intimate partners.<sup>1</sup> Yet domestic violence homicide is the most predictable—and therefore preventable—type of homicide that we know of. Domestic violence escalates along predictable lines, and if the State does not intervene to the fullest extent of the law, the situation can become lethal.

In Cindy Bischof's tragic case, law enforcement was aware that her estranged boyfriend presented an extremely high danger to her. He had violated the orders of protection she had against him at least three times; he was suicidal and had mental problems. But the system failed her. Despite her pleading with the court for increased protection against her perpetrator, and all the self-help measures she employed, the criminal justice system did not provide her the necessary protection. Her case is a sharp illustration that the justice system—even for a domestic violence victim who does everything right—is not currently set up to offer meaningful protection from repeat attacks.

But it does not have to be this way. Our study of domestic violence homicides indicates that the use of danger assessments to identify high-risk cases in combination with GPS electronic monitoring and other offender containment options can effectively stop the violence. Thus, we recommend 1.) the use of **dangerousness assessments** in all domestic violence cases to help predict the risk of future re-assault; 2.) the use of **GPS electronic monitoring** for batterers to ensure his compliance with the terms of the order of protection; and 3.) the creation of **batterer detention facilities** to house batterers after an arrest or as part of a **graduated sanction** to address domestic violence.

### I. Dangerousness Assessments

- A dangerousness assessment is:
  - an analysis of an abusive relationship by a trained professional to identify risk factors for lethality in order to decrease the risk of future re-assaults and particularly future domestic homicides;
  - **easily conducted by law enforcement** when responding to a domestic violence incident;<sup>ii</sup>
  - based on research of domestic homicides and attempted homicides and includes consistently present indicators of future violence
- How/when dangerousness assessments should be conducted:
  - **in every single domestic violence situation that comes through the legal system.**
- What the Dangerousness Assessment includes:
  - Questions about the threats to kill the victim if she leaves him; threats to the child or children; possession of a gun; sexual jealousy and possessive attitudes; previous abuse; whether the victim has attempted to leave; violence toward pets; suicide threats; and whether the victim believes he can kill her; the type of violence i.e. slapping, punching and strangulation; and violence

during pregnancy. (See Dr. Jacqueline Campbell's website [www.dangerassessment.com](http://www.dangerassessment.com) for more information).

- How the results should be used:
  - To **identify high-risk offenders** that need increased monitoring and containment
  - To **help judges** decide who should be put on GPS monitoring to ensure enforcement of the order of protection
  - To indicate to judges the dangerousness of offenders in order to enable them to make better judgments about incarceration or commitment to a batterer detention facility.
  - On an **ongoing basis** to detect increases in dangerousness levels
  - To **facilitate a coordinated community response** to domestic violence where law enforcement, advocacy, service providers and others all speak the same language through the use of a common document.

## II. Global Positioning System (GPS) Monitoring

- Illinois should enact legislation to provide for GPS electronic monitoring of batterers to give an order of protection meaning. Many orders of protection are violated, and **batterers inflict retributive violence** against their partners for trying to leave, or seeking help in the justice system. Violations are not always taken seriously by the justice system, but they must be. **Violations of restraining orders are signs of increased danger and possible lethality to a battered woman!**
- GPS monitoring is:
  - the use of global positioning satellite devices to track batterers for real-time notification of violations of orders of protection.
  - Done by law enforcement officials or private companies who monitor the offenders and notify the police and the victim immediately in case of a breach.<sup>iii</sup>
- GPS monitoring benefits are:
  - more protection for battered women – law enforcement will know the moment that a batterer has entered a prohibited zone and can intercept him *before* he is able to reach her.
  - this technology can provide safety for the battered partner so that she doesn't bear the burden of hiding out in a shelter—this will enable her to stay safely at home and go about her daily life without the fear of being re-assaulted.
  - Judges will be more willing to actually impose meaningful sanctions (like GPS monitoring) when it allows batterers to keep their jobs, contribute to child support, and avoid incarceration without endangering their victims.
- When GPS or vastly-increased police monitoring is combined with a coordinated community response, including dangerousness assessments in all domestic violence cases, it effectively prevents further violence and possible escalation into domestic violence homicides.
- GPS monitoring provides an effective method of enforcing the terms of an order of protection by notifying law enforcement and the victim if the offender breaches a forbidden zone

- GPS monitoring also provides law enforcement with proof of violations, so that sanctions can be increased along with any escalation of danger

#### Best Available Technology

Every GPS surveillance system for domestic violence offenders should have a few uniform, key components in order to ensure that it is able to effectively save lives by providing quick, accurate information to the authorities and victims who need it most.

- A GPS surveillance system should include technology which will automatically notify the victim when the batterer has breached the woman's protected zone or has left his inclusion zone. This notification will allow the victim to seek an area of greater security and get children to safe areas.
- GPS surveillance should also enable state officers to respond immediately to any breach of a restraining order.
- The GPS device must be worn on a tamper-proof bracelet or ankle-bracelet to ensure that the batterer is tracked at all times. The GPS unit should immediately notify authorities if it has been tampered with or removed.
- Best available technology also includes the ability of the monitors to speak to the offender through a cell phone implanted in the bracelet device enabling the monitors to verbally apprehend the offender, as well as a loud alarm that can be activated to warn the potential victim of the offender's presence in a forbidden zone.
- The inclusion zone should be drawn around the offender, allowing him to go between his place of residence, his employment, and other places in a circumscribed area. Containing the offender's movements restores freedom and liberty to the victim.

#### GPS Should be a Part of a Coordinated Community Response to Keep Victims Safe

- Coordinated community response programs ensure that high risk cases are accurately identified, victims are provided with adequate protection and services, law enforcement personnel and judges are made aware of the dangerousness of the individual, and adequate containment or surveillance methods are incorporated to keep victims safe.
- This approach utilizes the cooperation of police departments, district attorneys, probation officers, victim's advocacy groups, victim's services providers, and health care workers.
- Lethality assessments are a vital part of a coordinated community response. Research by medical experts has identified a set of questions to identify when batterers present a high risk to their victims. Factors like threats of suicide, threats to murder the victim, and previous attempts to choke the victim have been proven indicators that the victim may be in extreme danger.
- Police officers responding all domestic violence calls should conduct risk assessments. Victims advocates and probation officers should also regularly conduct these assessments to identify high-risk cases. Open communication allows courts and law enforcement authorities to adequately assess and respond to the level of danger a batterer may pose.
- When a court finds that a batterer poses a high lethality risk, a defendant is often held prior to trial in jail, or is released with a Global Positioning System technology

(GPS) monitoring device which ensures that the offender does not contact the victim, or violate the order of protection.

- When police officers or victim's services providers identify a high-risk case, they can work together with victim's advocacy groups to ensure that the victim is supplied with needed services, support, and legal representation.

#### The Success of the Newburyport Massachusetts Model

- The Greater Newburyport High-Risk Case Management Team is proving that the criminal justice system CAN offer meaningful intervention in domestic violence cases. The Team is composed of law enforcement, probation officials, professionals in victim's services, batterer's intervention services, and health care workers. Each partner screens cases and helps in the development of an intervention plan to keep victims safe.
- The Newburyport system is currently being modeled in other communities in the state of Massachusetts, and the model has been presented to other groups on a state and national level.
- The Newburyport system has resulted in increased incarcerations of offenders before trial, which is often one of the most dangerous times for domestic violence victims. In addition, 3 cases were placed on GPS for pretrial monitoring while four more batterers were placed on GPS post release.
- In the team's first two years of operation, there have been only two re-assaults in the 42 cases the team identified as high risk, a 95% success rate. Of the offenders monitored by GPS, there have been no re-assaults—a 100% success rate!

#### CONCLUSION

GPS monitoring of batterers in high-risk cases is not a panacea, nor is it appropriate for all domestic violence cases. Rather, GPS monitoring must be used as part of a coordinated community response by teams that identify and respond to high-risk cases. When used in this way, in combination with other graduated sanctions (such as the use of jails or detention facilities), these teams of people working together can save lives. Domestic violence homicide can be prevented. In honor of Cindy Bischof's life, we urge the Illinois legislature to pass this Act to help prevent future unnecessary and preventable tragedies. <sup>ND</sup>

Respectfully submitted,

Diane Rosenfeld, J.D., LL.M.  
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April Farris, Class of 2008  
Harvard Law School



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<sup>i</sup> (Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm>) (2004).

ii

In Maryland, 58 counties have adopted "lethality assessments" to identify high-risk cases and to ensure that victims of domestic violence are connected with the support, advocacy, protective order information, and health resources that they need immediately following a domestic violence call.

The police, who are trained on the use of these tools, first ask key questions to identify extremely dangerous situations. These questions identify whether the batterer has threats to the victim's life in the past, threats to the victim's children, threats against the victim with a deadly weapon. If the victim says "yes" to any of these questions, the victim is immediately referred to counseling services.

Most importantly, high-risk batterers identified through lethality assessments are given high priority by the legal system to ensure that they are not released when they pose significant threats to victims. The state asks judges to incorporate the results of a lethality assessment when making decisions regarding bail. Attorneys also work with victims to ensure they are supported while pursuing their claims.

<sup>iii</sup> Two companies for example are Secure Alert ([www.securealert.com](http://www.securealert.com)) which monitors offenders with a unit that is worn on the ankle bracelet that includes a cell phone, a GPS, and an alarm, and isecuretrak ([www.isecuretrak.com](http://www.isecuretrak.com)).

*This same 5  
page testimony was  
given to the Senate  
as an attachment!*

Testimony on HB 1291  
House Judiciary Committee  
January 19, 2009

Chair DeKrey and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services and I am here to provide neutral testimony regarding HB 1291.

Domestic violence is a pervasive social issue plaguing thousands of families throughout North Dakota that must be addressed through a coordinated effort by many institutions. Without a systemic response it is almost impossible to assure the safety of the victim and their children while also holding the offender accountable for their actions. Statutory changes, policies, and training have provided institutions with the necessary tools to respond to the crime of domestic violence. With the establishment of pro and mandatory arrest policies more offenders are being arrested and convicted of assault. Offenders are seldom given straight jail time and are often subject to a protection order and are either referred for batterers' treatment or placed on probation.

HB 1291 poses potential challenges to parole and probation at a time with fewer officers and expanding caseloads. Although we agree that offenders should be held accountable for their actions we know that batterers' are often chronic offenders. In an article written by Fernando Mederos titled *Domestic Violence and Probation* he highlighted two drawbacks for probationers working with domestic violence offenders: if offenders aren't given specialized attention, the rate of recidivism will be very high. Mederos estimated that nearly 75% of offenders on probation will assault their partners, violate protection orders, and violate other terms of their probation. Additionally, if they are not given specialized attention most batterers' will continue to terrorize and harass the victim and children therefore increasing the potential for serious injury or death. Although there isn't any probationary measures that can potentially predict or prevent this without specialized management measures the violence is almost guaranteed to continue.

We also anticipate that law enforcement may be concerned about the language proposed in the bill under section 12-67-02 (lines 8-9) that states they will be responsible for assessing whether a domestic violence offender is at high risk of re-assaulting the victim. Over the years we have provided training for law enforcement related to lethality assessments in domestic violence cases but due to disproportionate resources available statewide rural departments may not have had access to this training. Additional training and resources will be necessary to ensure all departments have access to information that will assist them in making the assessment and determination of high risk offenders.

Although we believe HB 1291 creates an additional tool for holding chronic or high risk offenders accountable for their actions we must also be committed to using other tools already available including incarceration. Victim safety is our utmost concern and we believe that coordination among all institutions will be the only way to ensure this.

Thank you.

Hadden 2  
1291

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES  
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • [ndcaws@ndcaws.org](mailto:ndcaws@ndcaws.org)

Testimony on HB 1291  
Senate Judiciary  
March 3, 2009

Chairman Nething and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in support of HB 1291.

I provided neutral testimony during the House Judiciary committee hearing on HB 1291 due to concerns we had with training and the amount and type of monitoring domestic violence offenders would require but we are now cautiously supporting the bill in its amended form.

Research shows that victims of domestic violence often continue to be in danger from their batterer and are in fact likely to be at increased risk once they separate. Statistics show that approximately 75% of the women murdered by a partner or former partner had separated from their batterer or told their batterer they planned to leave. Many victims of domestic violence seek protection orders as a tool to increase their safety.

Electronic monitoring for offenders who violate protection orders serves as an **additional** tool that would assist in protecting victims and their children's safety by alerting the victim if the batterer has crossed into an exclusionary zone. As stated in Electronic Monitoring of Domestic Violence Cases-A Study of Two Bilateral Programs, *'The intimate nature of these relationships means that the offender will be well versed in the victim's routines and personal and social affiliations such as family, friends, and membership in organizations. He knows when and where she works, the school where she waits to pick up the children, her telephone numbers, as well as her travel routes to reach home, work, or fulfill other responsibilities and needs or preferences. Such knowledge of her routines furnishes the abuser with numerous opportunities to harass, stalk, intimidate, and assault or abuse the victim in violation of protection orders.'*

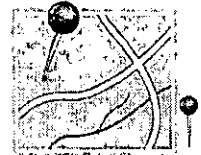
It is critical to understand that GPS monitoring of offenders is only effective as part of a larger coordinated system. If not enough trained officers can respond quickly when an offender approaches a victim and if the court lacks resources to hold offenders accountable, the monitoring devices will not be effective.

Again, while there is not a single answer, GPS electronic monitoring creates an additional tool for holding chronic or high risk offenders accountable for their actions but we must also remain committed to using other tools already available including incarceration. Whether a victim is seeking a temporary or permanent protection order, contacts law enforcement or seeks domestic violence services, they are best equipped to predict how their batterer will respond to different punitive measures. Courts must work with victims when considering the use of this technology and explain the limitations of the system and work with advocates to ensure appropriate safety planning.

Thank you.



## GPS Monitoring of Offenders



### How the Technology Works

Global Positioning Systems (GPS) are increasingly being used to monitor an offender's location and notify someone if the offender enters an exclusion zone. Satellites track the location of the offender's GPS device (often secured on an ankle).

- There are two types of GPS tracking: **active and passive**. Active tracking is most often used with violent offenders since it provides real-time location of the offender 24 hours a day. With passive tracking, an offender wears a device 24 hours a day but the monitoring official might only receive an offender's location information once a day when the offender uploads it from home. Passive monitoring is not recommended for use with stalkers and violent offenders.
- Active monitoring is only effective if an administrator continually monitors the location of offenders, 24/7. In some places, monitoring is done by corrections or local police officers who know the offender and the victim while other communities outsource this function to a vendor that works elsewhere.
- An electronic monitoring program can set up "exclusion zones" around the victim's home, work, etc., and an enrolled offender may not enter those geographic areas. If the offender enters those zones, an alert can be immediately sent to the monitor.
- Some systems notify the victim with a pager if the offender enters any exclusion zone. Other systems track the *victim's* real-time location by using GPS on the victim's pager device. If the victim is not in the exclusion zone and the offender comes near the victim, the system will typically alert both the monitoring official and the victim. The offender can also be contacted and police can be dispatched.

### How Are Grantees (Agencies and Partnerships) Using It?

Some agencies use GPS monitoring of offenders before trial as a condition of release from jail. Others use it after an offender violates a restraining order. After a plea or conviction, an offender may be required or voluntarily agree to be electronically monitored as an alternative to staying in jail or prison. Typically offenders pay the monitoring program fee.

### Benefits and Risks

It is critical to understand that GPS monitoring of offenders is only effective as part of a larger coordinated system. If not enough trained officers can respond quickly when an offender approaches a victim and if courts lack resources to hold offenders accountable, the monitoring devices will not be effective. It is vital that a community-based advocate explains to the victim how the offender tracking system works and its benefits and risks.

If a community offers real-time tracking of *victims*, it is important to note that while this additional service may offer the victim extra protection, the victim, who has not committed a crime, is tracked 24-hours a day. This raises serious safety and privacy risks. It also creates a risk that the offender or offender's attorney may try to obtain the victim's location records in an effort to intimidate or harass the victim. For safety, a monitoring agency's policies should restrict access of a victim location to the fewest staff possible. Any victim who is considering carrying a GPS device must be fully informed of all risks and benefits, provide consent before being tracked, and must be able to withdraw that consent at any time.

### Things To Consider

- How will offender monitoring be staffed? Will it be staffed by local corrections/law enforcement or outsourced?
- Will the monitoring agency be partnering with a non-profit advocacy program to safety plan with victims of the offenders who enroll? Is this partnership reflected in the project proposal, MOUs, and budget?
- Will the victim's location be tracked as well? If so, how will the agency provide complete notice and obtain informed consent from the victim? Are there clear policies that limit access to the victim's location and ensure that a victim's location records are not retained so the records cannot be requested by the offender or offender's attorney?
- Is the GPS monitoring system part of a larger system response or is it being considered as an isolated "solution?"